

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY,

Plaintiff,

vs.

TOWN OF NORTH BROOKFIELD,

Defendant.

Civil Action No. 03-40266-CBS

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON  
COUNT III OF DEFENDANT'S COUNTERCLAIM – TORT

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Plaintiff, American Manufacturers Mutual Insurance Company (“AMMIC”), hereby moves for summary judgment on Count III of the Town of North Brookfield’s Counterclaim that is captioned as an unspecified “tort.” The Town of North Brookfield (the “Town”) alleges in Count III that AMMIC breached a *tort* duty of fair dealing by not fulfilling its obligations under the bond. Under Massachusetts law one’s duty of good faith and fair dealing is an implied *contractual* obligation – unrecoverable in tort. Moreover, the economic loss rule precludes recovery in tort because none of the Town’s claimed damages arise from personal injury or property damage. Accordingly, Count III does not lie and summary judgment should enter in AMMIC’s favor.

AMMIC submits in further support of this motion its Statement of Undisputed Facts, its Memorandum of Law and the Affidavit of Deborah S. Griffin.

**REQUEST FOR HEARING**

AMMIC requests a hearing on this Motion.

**CERTIFICATION UNDER LOCAL RULE 7.1**

The undersigned hereby certifies that counsel have conferred and have attempted in good faith to resolve or narrow the issue presented by this motion.

**AMERICAN MANUFACTURERS  
MUTUAL INSURANCE COMPANY**

By its attorneys

**HOLLAND & KNIGHT LLP**

/s/ Deborah S. Griffin

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